



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 22nd September, 2022**

+ **W.P.(C) 3670/2017 & CM APPL. 16145/2017 & CM APPL.
40425/2017**

BUDHU (NOW DECEASED) THR LRS Petitioners

Through: **Mr. R. B. Singh and Mr. Mohd
Hashim, Advocates**

versus

NATHU (NOW DECEASED) THR LRS AND ORS

.....Respondents

Through: **Mr. Parvez Bashista, Advocate for
R-10, 11, 13 and 14
Mr. Sameer Vashisht, ASC, Civil,
GNCTD with Ms. Sanjana Nangia,
Advocate for R-15 (Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 of the Constitution of India has been filed on behalf of the Petitioners seeking the following reliefs:

“(a) issue a writ for certiorari or any other appropriate writ, direction or order thereby calling for the records Revision Petition bearing No. 326/2015 (Old)/302/2016(New) titled as " Sh. Budhu (deceased) through LRs Vs. Sh. Nathu (deceased) through LRs & Ors." and quashing or setting aside the orders dated 21.10.2016 and Order dated



11.04.2017 passed by Ld. Financial Commissioner of Delhi;
(b) issue a writ for mandamus or any other appropriate writ, direction or order thereby directing the Respondent No. 15 to rectify the records in respect of possession and the Bhumidari right relating to Khasra No. 18 (14-8) in the revenue estate of Village-Nangli Razapur, New Delhi, thereby removing the entries in the name of the Respondents in the revenue record and the same to be substituted by legally, lawfully corrected recording the name of the Petitioners as Bhumidar in respect of the land in question and cause necessary rectification, correction or amendment in all revenue records in relation to the land in question;

(c) issue a writ for certiorari or any other appropriate writ, direction or order thereby quashing the impugned order dated 28.02.2011 passed by the Revenue Assistant in Case No. 84 of 86 (Old No. 87 of 58) titled as "Sh. Nathu Vs Sh. Budhu (deceased through LRs.) wrongly mentioned as Sh. Nathu Vs. Sh. Puran and order dated 14.09.2013 passed in Case No. 03/2011 and 02/2011 titled as "Sh. Budhu (deceased through LRs. Vs. Nathu (deceased through LRs.)" apparently against the principles of natural justice containing an apparent error of judgment in appreciating the facts of the case as duly substantiated by evidence led on behalf of the Petitioners and further failing to follow the settled law of land;

(d) issue writ of prohibition or any other appropriate writ, direction or order thereby prohibiting the Respondent No. 15 or any of its subordinate officer, agents or assigns etc., from in any way dispossessing the petitioners from their legal and lawful use, occupation, possession and cultivation of land falling in Khasra No. 18 (14-8) situated in revenue estate of Village-Nangli Razapur, Delhi in execution of the impugned order dated 28.02.2011 till the final disposal of the matter before this Hon'ble Court;

(e) pass such other/s as this Hon'ble Court may deem fit, just



and proper in the facts and circumstance of the case and in the interest of justice, equity and fair trial.”

FACTUAL MATRIX

2. The facts of the case necessary for deciding the instant writ petition are as follows:-

Sh. Budhu-predecessor-in-interest of the Petitioners herein, has been in continuous use and possession of the agricultural land in Khasra No. 18(14-8) alongwith Khasra No. 38min (5-17), 74min (5-5), 83min (4-1) admeasuring 29 Bigha 11 Biswa situated in the revenue estate of Village Nangli, Rajapur, New Delhi, since the year 1947-48 as a tenant by its original recorded owner Smt. Hardevi on *batainisfi*.

3. On 11th June 1958 Sh. Nathu (now Deceased) was declared Bhumidar of the subject land and Sh. Budhu (now deceased) being in unauthorized/illegal possession of the subject land. The Bhumidhari rights issued in favour of Nathu was initially challenged by the legal representatives of Shri Budhu by filing of a Civil Suit against Nathu, the predecessor in-interest of Respondents. The said Civil Suit was dismissed on merits vide order dated 7th May 1962 by the then Sub-Judge, Delhi. The said order was appealed by the legal representatives' of Budhu vide a Regular Civil Appeal No.126/62. The said Appeal was also dismissed on merits by the Court of Additional District Judge vide order dated 8th November 1962. Thereafter, the said order was never challenged by the legal representatives of Budhu.

4. Sh. Nathu, the predecessor-in-interest of the Respondents, filed a



suit for ejectment under Section 84 of Delhi Land Reforms Act, 1954 in respect of Khasra No. 18 (14-8) seeking inter-alia decree of ejectment of Sh. Budhu s/o Sh. Sher Singh alleging that Budhu to be in occupation of the land in question in Kharif 1957 without his consent, as he has been declared as the Bhumidar in respect of the said land.

5. On 21st January 1963 Suit under Section 84 of Delhi Land Reforms Act, 1954 filed by Nathu against Budhu, was dismissed by the Ld. Revenue Assistant on the ground that Nathu has no locus standi to file the suit. Nathu filed an appeal before the learned Additional Collector, which was allowed in favour of Nathu vide order dated 10th January 1964. The legal heirs of Budhu filed a revision petition bearing no.131/1964 under section 187 of Delhi Land Reforms Act, 1954 before the learned Chief Commissioner against the order dated 10th January 1964 passed by the Additional Collector. The said revision petition was allowed vide order dated 17th September 1965 and the order of the Additional Collector was set aside and that of the Revenue Assistant restored.

6. On 26th April 1973 the legal heirs of Sh. Nathu filed Civil Writ Petition No.1-D/1966 against the order dated 17th September 1965 of the learned Chief Commissioner, allowing the revision petition. The civil writ petition was allowed by a Co-ordinate bench of this Court vide order dated 26th April 1973, by which the order dated 17th September 1969 of the Chief Commissioner, Delhi was set aside and ultimately the case was remanded back to the Chief Commissioner. The Co-ordinate bench of this Court also affirmed the validity of the Bhumidhari certificate issued in favour of Sh. Nathu. On 28th February 1975 the Financial Commissioner



remanded the matter back to the Revenue Assistant to decide the suit under Section 84 of the Delhi Land Reforms Act, 1954, in accordance with law and also observed as under:-

“The moot point for decision in these proceedings was whether the bhoomidar of the plaintiffs in respect of the land in dispute stood cancelled in view of the order dated 4th January 1961 passed by Shri Harphool Singh, the then Revenue Assistant. On this point, Shri Narshingh Kishore had decided this issue against the plaintiffs but in appeal the order of Sh. Narsingh Kishore was reversed. While deciding the revision, the Chief Commissioner Shri V. Vishwanathan had restored the order of Sh. Narsingh Kishore. This point finally stands decided by his Lordships of the Delhi High Court in his order of remand wherein it has been held that bhoomidari of the plaintiffs vis-a-vis the land in dispute was not affected by the order of Shri Harphool Singh dated 4th January 1961 in the some other proceedings.”

7. Thereafter, in the year 2008 during the pendency of the eviction petition under Section 84 of Delhi Land Reform Act, 1954, the legal heirs of late Budhu, filed a suit No.17/RA/DC/08 under Section 85 of Delhi Land Reforms Act, 1954 by which they challenged the alienation of the subject property by the legal heirs of Nathu by way of executing a sale deed in respect of the land in question in favour of one Mr. Jawahar Singh and one Ms. Pushpa Devi thereby, alleging themselves as the joint owners in possession of the land in question and further recording that land in question had been mutated in the name of the said purchasers. The learned Revenue Assistant decided the suit under Section 84 of Delhi Land Reforms Act, 1954 (being suit No.84/86 (old No.87/58) and decreed the same in favour of the Respondents herein and dismissed the suit under Section 85 of Delhi Land Reforms Act, 1954 (being suit



No.17/RA/DC/2008) filed by the Petitioners herein and ordered delivery of possession of the subject land within 30 days vide composite judgment dated 28th February 2011.

8. The Petitioners filed two appeals being case No.03/2011 titled as "Buddhu (deceased) Through LRs Vs. Nathu (deceased) Through LRs & Ors." against the order decreeing the suit U/s 84 of Delhi Land Reform Act, 1954 and another appeal being No.02/2011 titled as "Jograj Singh & Ors. Vs. Sh. Harender Bashistha & Ors.(Respondents No.10 to 14)" against the order dismissing the suit No.17/RA/DC/2008 under Section 85 of Delhi Land Reforms Act, 1954 before the Deputy Commissioner as provided under Section 185 of Delhi Land Reforms Act, 1954 which were also dismissed vide composite order dated 14th September 2013.

9. In January 2014 the Petitioners filed writ petition being W.P.(C) No.1323/2014 only against the order dated 14th September 2013 passed by the Deputy Collector (South) in case No.03/2011 titled as 'Buddhu (deceased) Through LRs Vs. Nathu (deceased) Through LRs & Ors.' against the order decreeing the suit under Section 84 of Delhi Land Reform Act, 1954. The Petitioners did not challenge the order dated 14th September 2013 passed in case No.02/2011 titled as "Sh. Jograj Singh & Ors. Vs. Sh. Harender Bashistha & Ors.(Respondents No.10 to 14)" against the order dismissing the suit No.17/RA/DC/2008 under Section 85 of Delhi Land Reform Act, 1954.

10. In the said writ petition, on 28th May 2014, an objection was raised by the Respondents that the writ petition is not maintainable, and the Petitioners could have availed the remedy of revision under Section 187



of Delhi Land Reform Act, 1954 but the Petitioners insisted the maintainability of the writ petition. The Petitioners gave an undertaking before this Hon'ble Court that they shall not raise any objection with regard to the execution of the warrant of possession passed by the executing court in respect of the land in the event they do not succeed in the writ petition. On 2nd September 2015 finally, the said writ petition was dismissed by a Co-ordinate bench of this Court with liberty to the Petitioners to take recourse to an appropriate remedy albeit in accordance with law.

11. In October 2015 a revision petition No.326 of 2015 was filed by the Petitioners only against the order dated 14th September 2013 passed by the Deputy Commissioner/ Collector (South) in case No.03 by which the appeal against the order of Revenue Assistant decreeing the suit filed by the Respondents herein under Section 84 of Delhi Land Reform Act, 1954 being Suit No.84/86 (Old No.87/58) was dismissed. Petitioners again did not challenge the order dated 14th September 2013 dismissing another appeal No.02/2011, dismissing the suit under Section 85 of Delhi Land Reform Act, 1954.

12. The Financial Commissioner Court vide its order dated 21st October 2016 was pleased to dismiss the revision petition bearing No.326 of 2015 of the Petitioners. The Petitioners had thereafter preferred the review petition No.302 of 2016 against the order dated 21st October 2016 passed by the Financial Commissioner solely on the ground that the Petitioners have already challenged the order dated 14th September 2013 passed by the Deputy Commissioner in appeal No.02/2011 titled as Jograj



& Ors. Vs. Harinder Bashista & Ors. before the Financial Commissioner Court vide Second appeal No. 191 of 2016 under Delhi Land Revenue Act, 1954. The Review Petition was dismissed vide order dated 11th April 2017.

13. Aggrieved by the said impugned judgment/order dated 21st October 2016 & 11th April 2017 the Petitioners are challenging the same seeking inter alia quashing and/or setting aside the said order and declaration in favour of the Petitioners as Bhumidar of the land in question.

SUBMISSIONS ON BEHALF OF THE PARTIES

14. Learned counsel appearing on behalf of the Petitioners has contended that the Financial Commissioner has passed the impugned order in a mechanical manner by ignoring the pendency of the second appeal in case No. 02 of 2011 and holding the same to have attained finality, thereby totally neglecting the fact of pendency of the said appeal.

15. It is further contended that the leaned Financial Commissioner while passing the impugned order dated 21st October 2016 has totally failed to appreciate that the testimonies of the Respondents and their predecessor-in-interest Nathu, and other witnesses led on their behalf have failed to prove the Bhumidari Certificate.

16. It is also contended that neither Nathu nor any of his other legal heir or any of the Respondent for that matter ever disclosed the name of the recorded owner of the subject land from whom they have acquired the rights of the land in question.



17. Learned counsel appearing on behalf of Petitioners further contended that the Courts below and the Financial Commissioner miserably failed to appreciate that the Sh. Nathu- as PW-3 being plaintiff in the suit below had in his evidence only stated the names of some dead persons namely Bhima or his mother Smt. Maro, both of whom could not have been examined. However, the unrebutted testimony of the successor-in-interest of the said two person had clearly dispelled the claims of Nathu and for that matter renders the entire proceedings as being illegal and injudicious.

18. Further, he has submitted that the Courts below and the Financial Commissioner gravely erred by failing to recall that the Petitioners were in continuous and uninterrupted use, occupation, cultivation and possession for the entire stretch of 29 bigha 11 biswas as a tenant of Smt. Hardevi, for more than 12 years before filing of the suit and was paying batai at half the rate i.e., batainisfi and they ought to have been declared as Bhumidar as contemplated under Section 13 of the Delhi Land Reforms Act, 1954.

19. It is also contended that the Courts below as well as the Financial Commissioner have miserably failed to consider that at the time of commencement of the Delhi Land Reforms Act, 1954, Babu Ram was a minor, a student, since even at the time of his statement before Court he was 21 years of age only and as such Nathu, claiming right unto the said land in question through Babu could not have been declared a Bhumidhar against the minor or student in terms of Section 10 (2) of the Delhi Land Reforms Act, 1954 which runs as under:-



"10 (2) Nothing in sub-section (1) shall apply to a tenant of Sir or a sub-tenant of occupancy tenant under Section 5 of the Punjab Tenancy Act or of the said pattadar, if his land holder belongs to any of the following categories of persons

-

(i) a woman

(ii) a minor

(iii) a lunatic

(iv) an idiot

(v) a person incapable of cultivation by reason of blindness or physical infirmity, or

(vi) a person in the armed forces of the Indian Union, at the commencement of tenancy and on the commencement of this Act.

(vii) a person prosecuting studies in a recognized institution and not exceeding 25 years in age, or

(viii) a person under detention or imprisonment, on the commencement of this Act provided that where a holding is held jointly by several landholders of whom one or more but not all are persons belonging to any of the above categories nothing in sub-section (1) shall apply to the share of these persons in the holding and such share shall be available for the acquisition of Bhumidhari rights by these persons."

20. Therefore, as such the declaration in favour of Shri Nathu was bad in law as the Bhumidhari certificate was issued to a person who never remained in possession at any time and the said Bhumidhari certificate was issued against the provisions of law, as such the proceedings under Section 84 of the Delhi Land Reforms Act, 1954 could not have been maintainable. Moreover, the suit having been bad at the time of its inception cannot be sanctified at a later stage as laid by the Hon'ble Apex Court in "Ritesh Tiwari & Ors Vs. State of UP" VII (2010) SLT -23 (para-26).



21. Lastly, learned counsel appearing on behalf of Petitioners has pleaded that the Courts below and Financial Commissioner have failed to appreciate the fact that neither the land in question ever belonged to Bhima or Smt. Maro or even to Babu Ram as per their own version nor for that matter Nathu ever remained in possession at any point of time, even at the time of his wrongful declaration as Bhumidar and the entry in respect of the land in question in the name of Nathu in Khasra Girdwari were absolutely illegal, unlawful, manipulated and fraudulent, which obviously had later on been corrected by the Revenue Authorities.

22. *Per Contra*, learned counsel appearing on behalf of the Respondents have taken a preliminary objection that the Petitioners have not approached the Court with clean hands and have concealed various material facts from this Hon'ble Court and hence the present petition is a sheer misuse of process of law and deserves to be dismissed on this ground alone.

23. It is also argued that in relation to the present dispute between the parties herein, the Petitioners have earlier also approached this Court and had filed a Writ petition bearing no. W.P. (C) No. 1323 of 2014 wherein the Petitioners had given an undertaking before this Hon'ble Court that if they would not succeed in the said petition they would not raise any objection with regard to the execution of warrants of possession issued vide order dated 26th May 2014 passed by the executing Court in respect of the subject land in favour of the Respondents.

24. It is further argued that the Petitioners eventually could not succeed



in the said writ petition which was dismissed by a Co-ordinate bench of this Court vide order dated 2nd September 2015. Despite the said undertaking given by the Petitioners they did not give possession of the said land to the Respondents.

25. Learned counsel appearing on behalf of Respondents contended that the Petitioners again did not challenge the order dated 14th September 2013 dismissing another appeal No.02/2011, by which the suit under Section 85 of Delhi Land Reform Act, 1954 was dismissed. Thus, the said order had attained finality and accordingly the Petitioners have admitted that the Respondents No. 10 to 14 are the Bhumidhar of the subject land.

26. It is further contended that after an unexplained lapse of more than 3 years, the Petitioners had preferred a challenge order in case no.2/2011 dated 14th September 2013 that too under the wrong provision of law, which is nothing but sheer misuse of process of law. Despite the fact that the filing of the said second appeal was well in knowledge of the Petitioners before passing of the order dated 21st October 2016 by the Financial Commissioner in the Revision petition No.326 of 2015 but the Petitioners purposely concealed the fact from the Financial Commissioner Court at the time of passing of the dismissal order dated 21st October 2016. Therefore, the claim of the Petitioners in the present writ petition that the observation of the Financial Commissioner Court in its order dated 21st October 2016 pertaining to non-filing of appeal by the Petitioners against the said order dated 14.09.2013 is absolutely erroneous.



27. It is also contended that the filing of second appeal under Section 66 of Land Revenue Act, 1954 against the order dated 14th September 2013 was misconceived and non-maintainable and abuse of process of law and there was no reason for Financial Commissioner to interfere as the entire proceedings between the parties herein are governed by the provisions of Delhi Land Reform Act, 1954.

28. Lastly, learned counsel for the Respondents have submitted that the Financial Commissioner has not committed any error in passing the order in the Revision petition. Moreover, the Financial Commissioner had rightly rejected the review petition of the Petitioners against the order passed in the Revision petition filed in terms of Section 114 of the Code of Civil Procedure, 1908 read with Order 47 of the Code of Civil Procedure, 1908 vide order dated 11th April 2017.

ANALYSIS AND FINDINGS

29. Heard learned counsel for the parties and perused the record. I have given my thoughtful consideration to the submissions made by the parties.

30. At the outset, the instant writ petition is a glaring example as to how precious judicial time has been wasted due to misconceived and frivolous second round of litigation. Suppression of material facts by the Petitioners in the instant writ petition warrants a special mention as well.

31. It is pertinent to reproduce the relevant portion of the order of a Co-ordinate bench of this court in Civil Writ No. 1-D of 1996 decided on 26th April 1973. It is relevant to mention that the above-mentioned writ



petition was instituted against the order of the Chief Commissioner dated 17th September 1965 passed in a revision petition against the order of the Additional Collector.

“Mr. G.R. Bhyatia, counsel for the petitioner, has assailed the findings of the learned Chief Commissioner. In my opinion, the order of the learned Chief Commissioner suffers from an error of law apparent on the face of the record. It is the admitted case of the parties that the order of Mr. Harphool Singh Revenue Assistant dated 4th January, 1961 (copy of which has been filed as Annexure-I), arose out of the dispute relating to Khasra No.1, 48, 64 and 156. There is no mention in this order of Khasra No. 18 (or for that matter of Khasra No. 19) nor was Nathu petitioner a party to the said proceedings. The learned Chief Commissioner felt that it was the intention of the Revenue assistant to apply his order to all the plots and to the whole body of the proprietors in the village, as in the opinion of the Chief Commissioner, the application of the order of Mr. Harphool Singh to three of four plots would be meaningless. But I am of the view that there was no valid basis for holding such opinion. The order of Mr. Harphool Singh had been passed under a statute and is not susceptible of the construction placed on it by the Chief Commissioner. If in fact the order dealt with and purported to deal with only four plots of land and only a few land holders, there was no rule of law by which its application could be extended on discovery of any hidden or supposed intention of the officer passing the order. The rule of law is that a statutory or a judicial order must be expressed and any relief not expressly granted would be deemed to be refused. If the said order was intended to cover all plots of land, it should have referred to them expressly or by necessary implication and if the original order had failed to express the intention of the officer, it ought to have been corrected by a review or amendment or by a superior officer on appeal or revision, but its operation cannot be extended by any analogy howsoever, desirable it may. Secondly Nathu



petitioner was not a party to the said proceedings and no notice has apparently been issued to him and so the order of Mr. Harphool Singh could not bind him. It is not contended that it was a judgment in rem and under the law previous judgments which were not between the same parties are ordinarily neither binding nor relevant in any subsequent dispute between them. The Chief Commissioner took notice of the objection but brushed it aside by the observation that this was a different matter. Here again, the learned Chief Commissioner was in error. The contention which had been raised before him was valid and unassailable and it was certainly not irrelevant. If Nathu petitioner was neither in fact nor constructively in law a party to the proceedings, the order passed therein behind his back did not and could not bind him. Consequently, there was no valid order of Shri Harphool Singh or any other authority cancelling the Bhumidari rights of the petitioner.

XXX

.....In my opinion, the order of the Chief Commissioner erroneous on the face of the record and will have to be quashed. Accordingly, I allow the writ petition and set aside the impugned order of the Chief Commissioner, Delhi date 17th September, 1965 and remand the case to the learned Chief Commissioner now known as Lieutenant Governor to decide the appeal afresh according to law. The costs of this writ petition will abide by the result of the appeal."

32. Therefore, a categorical finding was given by a Co-ordinate bench of this Court that the order passed by the Revenue Assistant, Mr Harphool Singh dated 4th January 1961 does not pertain to the Khasra No. 18 as it was only restricted to Khasra No. 1, 48, 64 and 156 and as such it does not affect the certificate of Bhumidari granted to Late Sh. Nathu. Accordingly, the order passed in revision petition being illegal was set



aside.

33. Two-fold implications can be drawn from the above-stated order, *first*, that as the grant of Bhumidari rights to Late Sh. Nathu qua Khasra No.18 in the year 1961 by the Revenue Assistant has become final as the civil suit filed against such declaration as well as the first appeal against the dismissal of suit were dismissed and were never made a subject of challenge in any other judicial forum, *secondly*, the order passed by a Co-ordinate bench of this court in Civil Writ No. 1-D of 1996 decided on 26th April 1973 was also never made a subject of challenge before any appropriate judicial forum and as such has also attained finality.

34. At this stage, it is pertinent to reproduce the prayer ‘b’ of the Petitioners by way of which an indirect attempt has been made to call upon this Court to again adjudicate on the issue which has already been dealt by a Co-ordinate bench of this Court way back in the year 1973.

“(b) issue a writ for mandamus or any other appropriate writ, direction or order thereby directing the Respondent No. 15 to rectify the records in respect of possession and time Bhumidari right relating to Khasra No. 18 (14-8) in the revenue estate of Village-Nangli Razapur, New Delhi, thereby removing the entries in the name of the Respondents in the revenue record and the same to be substituted by legally lawfully corrected recording the name of the Petitioners as Bhumidar in respect of the land in question and cause necessary rectification, correction or amendment in all revenue records in relation to the land in question;”

35. Therefore, such tactics and conduct on the part of the Petitioners are deprecated and are a glossy example of as to how judicial time has



been wasted. Even otherwise, this Court does not find any ground to exercise its jurisdiction under Article 226 of the Constitution of India. It is pertinent to outline the scope of writ jurisdiction under Article 226 of the Constitution of India while examining and adjudicating upon an impugned order.

36. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction. While examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record.

37. The Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran***, (2015) 2 SCC 610, elaborating upon the extent of exercise of writ jurisdiction, held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*



(v) interfere, if there be some legal evidence on which findings can be based. (vi) correct the error of fact however grave it may appear to be:....”

38. The law, as has been interpreted by the Hon’ble Supreme Court, is clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record.

39. Learned Revenue Assistant has decreed the suit of the Respondents before this Court way of the following observations:

“13. The plaintiff was declared bhumidar on 29.04.1958 and he filed the suit on 11.06.1958 within the period of limitation as per schedule I of the DLR Act at entry No. 19, suit for ejectment of a person occupying land without title and damages can be filed within 3 years from the day of forcible possession. The defendant failed to challenge the order of grant of Bhumidhari rights to the plaintiff before the revenue authorities' i.e, competent court having jurisdiction, when the Plaintiff was granted the Bhumidari rights by the RA. In fact a suit for declaration was filed by late Sh. Puran and eight others in the capacity of legal heirs of late Sh. Budhu before the Civil Court being 305/61 against the Plaintiff Sh. Nathu and the same was dismissed on 07-05-1962 by Sh. M.L. Mirchia, the then Sub-Judge-I Class, Delhi.

14. The suit filed by the defendants for declaration of Bhumidhari rights in the year 2008 titled as Jograj Singh & Ors V/s Sh.Harender Bashista 85 Ors does not fulfill the essential requirements as laid down by the Act u/s 85 as the same was filed during the pendency of eviction suit filed by the plaintiff and it established as per law that no adverse possession can be claimed as the suit for eviction was filed in the year 1958 itself, hence the claimant cannot take



benefit of adverse possession.”

40. On appeal the, the appellate authority vide order dated 14th September 2012 confirmed the finding of the learned Revenue Authority. The relevant portion of the order is reproduced below for the sake of brevity:

“Even we consider the statement of Halka Patwari, it is seen that land came in cultivator possession of appellant only in 1956, just 02 years before filing the suit for eviction. As per deposition of patwari himself, name of respondents was appearing in khasra/girdawari from the year 1954 and 1955 as cultivatory possession. Anyway respondents were declared as Bhumidar in the year 1958 and hence his possession was confirmed by the declaration. From the record and proceedings, it has been established that the possession of suit land by the appellant was unauthorizedly and against the legal provisions. This has been further confirmed from the fact that appellant has filed a case under section 85 of the DLR Act wherein he has taken the plea that he was in adverse possession of the suit land, meaning his possession was unauthorizedly and against the provision of law. Considering all this, I feel Ld. Revenue Assistant, rightly granted the application of respondents and dismissed the application of Appellant to declare him Bhumidar under section 85 of DLR Act.”

41. The Petitioners herein had filed a partial appeal against the order of the appellate authority dated 14th September 2013, a Co-ordinate bench of this Court in W.P. (C) 1323 of 2014 dismissed the appeal on the ground that appropriate remedy in accordance with law may be taken by the Petitioners therein. The relevant portion of the order dated 2nd September 2015 is reproduced below:



"5. In these circumstances, in my view, the preliminary objection taken by the respondents is sustainable since, against the order passed by the Deputy Commissioner/Collector (South) a revision petition clearly lies with the Chief Commissioner.

5.1 Therefore, the writ petition is dismissed with liberty to the petitioners to take recourse to an appropriate remedy; albeit in accordance With law."

42. It is relevant to mention that in the above writ petition, the Petitioners did not challenge the order dated 14th September 2013 passed in appeal No.02/2011 against the order dismissing the suit No.17/RA/DC/2008 under Section 85 of Delhi Land Reform Act, 1954.

43. The revision petition no. 326 of 2015 before the learned Financial Commissioner, Delhi against the order dated 14th September 2013 passed by the appellate authority in case no.03 of 2011 was also dismissed vide order dated 21st October 2016. The relevant portion of the order is reproduced below:

"On the one hand the applicant/petitioner have stated there is no need to file the separate appeal against the order dated 14.09.2013 in appeal No. 02/2011, as both the appeals bearing No. 02/2011 & 03/2011 have been disposed by the common order dated 14.09.2013, on the other hand they have stated that, they have already filed the revision petition against the order in appeal no. 02/2011 and in my considered view, applicants/petitioner cannot be allowed to adopt double standard."

44. In Revision, the Petitioners again did not challenge the order dated 14th September 2013 dismissing another case No.02/2011 thereby,



dismissing the suit under Section 85 of Delhi Land Reform Act, 1954 and thus, I find force in the arguments of the Respondents that the said order had attained finality and an attempt to revive it by filing a second appeal before the Financial Commissioner under a different statute cannot be said to be an action in accordance with law.

45. The Petitioners had thereafter preferred the review petition no.302 of 2016 against the order dated 21st October 2016 passed by the Financial Commissioner solely on the ground that the Petitioners have already challenged the order dated 14th September 2013 qua appeal no. 02/2011 passed by the Deputy Commissioner in appeal No.02/2011 before the Financial Commissioner Court vide Second appeal No. 191 of 2016 under Delhi Land Revenue Act, 1954 on 8th July 2016. This review petition was also dismissed vide order dated 11th April 2017.

CONCLUSION

46. Entire proceedings between the parties are governed by the Delhi Land Reforms Act, 1954 and accordingly, the said second appeal filed before the Financial Commissioner under the Delhi Land Revenue Act, 1954 is not maintainable in law. The grant of Bhumidari rights to the Respondents in the year 1961 had attained finality as it was never made a subject of challenge by the Petitioners after their first appeal was dismissed by the learned Additional District Judge in the year 1962, and this conclusion is fortified by the finding of a Co-ordinate bench of this Court in the year 1973 as has been discussed above. The entire second round of litigation, to declare the Petitioners as Bhumidars has been initiated by the Petitioners without any regard for the sanctity of the legal

W.P.(C) 3670/2017



process

47. In view of the aforesaid, I do not find any illegality or error apparent on the face of record in the orders passed by the Revenue Assistant which have been further upheld by the Appellate Authority as well as the Revenue Authority.

48. Keeping in view the observations and discussions in the foregoing paragraphs and the facts and circumstances, the instant writ petition is nothing but gross abuse of the process of law and accordingly, being devoid of merits is hereby dismissed. Pending applications also stand dismissed.

49. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 22, 2022
Dy/mg